

Section 1: Commissioner's Letter and Summary of Changes



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February 28, 2013

Pamela B. Booth, Administrator
Legislative Regulation Review Committee
Room 011, Capitol Building
Hartford, CT 06106

RE: Proposed Regulation 2012-063

Dear Ms. Booth:

In accordance with section 4-170 of the Connecticut General Statutes, the Connecticut State Library is resubmitting its proposed regulation concerning real property electronic recording (2012-063).

This mandated regulation was "rejected without prejudice" by the Legislative Regulation Review Committee on January 22, 2013, based on the recommendations of the Legislative Commissioners' Office.

The State Library has revised the regulation in response to the Substantive Concerns and Technical Corrections identified in the Legislative Commissioners' Office Memorandum dated January 14, 2013.

The State Library declines to implement in part the recommendations contained in Substantive Concerns 1 and 2 and Technical Corrections 5, 7, and 10, for reasons explained fully in the required Summary of Changes enclosed with this letter. All other recommendations have been implemented as directed.

In accordance with CGS section 4-170, the State Library submitted the revised regulation to the Office of the Attorney General on February 21, 2013 and received approval as to legal sufficiency on February 27, 2013.

This regulation was drafted by the State Librarian in consultation with the Real Property Electronic Recording Advisory Committee, as mandated by CGS section 7-35ee. The committee's thirteen members included three town clerks; three attorneys experienced in real estate law; a designee of the Secretary of the State; the Public Records Administrator; an individual experienced in mortgage banking; an individual experienced in the business of title insurance; a notary public; an individual with experience performing title searches of real property; and a licensed real estate broker.

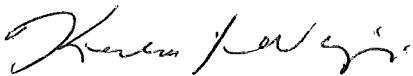
In addition, throughout the drafting process, the State Library provided email updates to all interested parties who had requested inclusion on the distribution list, provided information to town clerks at meetings and conferences, and maintained relevant documents for review on its website. The State Library also provided email updates to all municipal chief executive officers and town clerks at the time of publication of its Notice of Intent and at each successive stage in the regulation adoption process.

In addition to this transmittal letter and the Summary of Changes, serving as Section 1, please find enclosed:

- Section 2: Proposed Regulation; Statement of Purpose – Revised Submission
- Section 3: Certification Page
- Section 4: Fiscal Note
- Section 5: Small Business Impact Statement
- Section 6: Notice of Intent
- Section 7: Summary of All Public Comments (None Received)
- Section 8: Miscellaneous Information: (1) Letter of Approval, Office of the Governor; (2) Real Property Electronic Recording Advisory Committee Membership List.

If you have any questions or require further information, please do not hesitate to contact me at (860) 757-6510 (kendall.wiggin@ct.gov) or Kathy Makover at (860) 566-1100 ext. 303 (kathy.makover@ct.gov).

Respectfully,



Kendall F. Wiggin

Enclosures

c: Office of Fiscal Analysis
Government Administration and Elections Committee
Judiciary Committee

Summary of Changes: Regulation Concerning Real Property Electronic Recording

The Connecticut State Library has revised the proposed regulation concerning real property electronic recording originally submitted for review by the Legislative Regulation Review Committee on January 22, 2013. The revised regulation is being resubmitted for review on March 26, 2013.

Revisions have been made in response to the Substantive Concerns and Technical Corrections identified in the Legislative Commissioners' Office Memorandum dated January 14, 2013, as described below.

Response to Substantive Concerns:

1. On page 2, section **7-35ee-4** requires the PRIA eRecording XML Implementation Guide to be "consulted for reference", but it is unclear who is required to consult such guide and when and for what purpose such guide is to be consulted.

REVISION: The State Library declines to implement the recommendation to specify who, when and for what purpose the Guide should be consulted, and has chosen instead to delete the sentence that stated it "should be consulted for reference." It would be difficult if not impossible to specify all the parameters for the use of the Guide. While anyone working with PRIA standards can consult the Guide, it is an option and not a requirement, as had been indicated by the use of the word "should" rather than "shall." In addition, from a practical standpoint, anyone involved in implementing PRIA standards would be aware of this Guide whether or not it is referenced within the regulation. We have discussed this revision with a PRIA technical consultant and he is in agreement with deleting the sentence that references the Guide.

2. On page 2 in section **7-35ee-6**, on page 3 in section **7-35ee-8(a)** and on page 4 in section **7-35ee-10(a)(5)**, said sections refer to "electronic signatures or notarizations", but it is unclear whether "electronic" refers only to "signatures" or if it also includes "notarizations". If "electronic" refers also to "notarizations" then the references to "electronic signatures or notarizations" should be "electronic signatures or electronic notarizations" for clarity and the term "electronic notarization" should be defined.

REVISION: As directed, the phrase "electronic signatures or notarizations" has been replaced with the phrase "electronic signatures or electronic notarizations" at each occurrence.

The State Library declines to implement the recommendation to define the term "electronic notarization." The notarization of electronic documents is addressed in the enabling legislation, CGS Chapter 92a, in section 7-35cc(c), and this legislation does not provide a definition for "electronic notarization." The regulation references the

enabling legislation as well as all applicable standards established by the Secretary of State and all applicable statutes, in sections 7-35ee-1, 7-35ee-6(a) and 7-35ee-10. After further discussing this issue with a representative from the Secretary of State's Office, the State Library has determined that it is unnecessary to define this phrase for the purposes of this regulation.

3. On page 3, in section **7-35ee-7**, subsection (a)(1) uses the term "recording information" but it is unclear what is required to be included as part of the "recording information" because it is not a defined term.

REVISION: As directed, a definition of "recording information" has been added to section 7-35ee-2 as definition (11), based on information found in CGS Sections 7-14, 7-24 and 7-25. The subsequent definitions been renumbered accordingly.

4. On page 3, in section **7-35ee-8**, the introductory language states "Procedures shall be implemented and maintained to ensure the security of the electronic document delivery system and the land records management system" but it does not indicate who shall be responsible for such implementation and maintenance. In subsection (c) it is also unclear who is responsible for providing audit trail information to participating town clerks.

REVISION: As directed, the first sentence of section 7-35ee-8 has been revised from passive to active voice. The three responsible parties already named within the other subsections of Section 7-35ee-8 are now named within the first subsection as well. Originally, the first paragraph had been intended as introductory text that the following subsections further clarified.

As directed, the two parties responsible for providing audit trail information have been named in subsection (c), renumbered as subsection (d) in this revised submission. (The renumbering of the sections is addressed under Technical Correction #7, below.)

For consistency, section 7-35ee-9(c) has also been revised from passive to active voice, naming the participating town clerk as the responsible party.

For consistency, to ensure that each of the three named parties is defined, a definition for "land records management system vendor" has been added to section 7-35ee-2 as definition (9), and the subsequent definitions been renumbered accordingly.

Response to Technical Corrections:

1. On page 1, before "The Regulations of Connecticut State Agencies", "Section 1." should be inserted for proper form.

REVISION: The correction has been made as directed.

2. There is no definition of "electronic" for purposes of this regulation. The definition contained in section 7-35bb of the general statutes is implied because of the meaning of "electronic document" which references said section, but a reference to the definition of "electronic" contained in said section should be added to section **7-35ee-2** of the proposed regulation for clarity.

REVISION: The correction has been made as directed.

3. On page 2, in section **7-35ee-3**, "following models" should be "following electronic recording models" for accuracy and consistency; and in subdivisions (2) and (3), "created and signed electronically" should be "created electronically and contain an electronic signature" for accuracy.

REVISION: The corrections have been made as directed.

4. On pages 2 and 3, in section **7-35ee-6(a)**, "including but not limited to," should be "including, but not limited to," for proper grammar; in section **7-35ee-6(b)** "clerk is only required to accept" should be "clerk shall only be required to accept" for proper form and in accordance with the committee's directive regarding mandates; and in section **7-35ee-6(c)**, "clerk has no responsibility to authenticate electronic" should be "clerk shall not be responsible for authenticating electronic" for proper form.

REVISION: The corrections have been made as directed.

For consistency, the same correction to the phrase "including, but not limited to" has been made in sections 7-35ee-1, 7-35ee-10(a), and 7-35ee-10(b).

5. On page 3, in section **7-35ee-7**, throughout the section, references to "recording" should be "electronic recording" for consistency and accuracy and all references to "document" should be "electronic document" for consistency with the defined terms.

REVISION: The State Library declines to implement the recommendation to change the term "recording" to "electronic recording" in section 7-35ee-7. These two terms have different meanings and each term is used intentionally and specifically. "Electronic recording" refers to the delivery and return of electronic documents while "recording" refers to the recording of documents on the land records. As the term "recording" is used in the enabling legislation without definition and throughout the statutes, it does not require definition for the purposes of this regulation.

As directed, all references to "document" in section 7-35ee-7 have been changed to "electronic document."

For consistency, the references to "document" in section 7-35ee-4 and in the heading of section 7-35ee-5 have also been changed to "electronic document."

6. On page 3, in section **7-35ee-7(b)**, "each submission" should be "each such submission" for clarity.

REVISION: The correction has been made as directed.

7. On page 3, in section **7-35ee-8**, the introductory language at the beginning of the section should be designated as subsection (a) and the subsequent subsection designators should be relettered accordingly for accuracy and proper form; in the introductory language "by the town clerk" should be "by a participating town clerk" and all references to "documents" should be "electronic documents" for consistency and accuracy; in subsection (b) "electronic transmissions and shall be responsible for maintaining the security of the systems within their offices." should be "electronic transmissions to participating town clerks through the electronic document delivery system and shall be responsible for maintaining the security of the electronic document delivery system within the office of such delivery agent." for clarity and proper form; and in subsections (d) and (e), "the town clerk" should be "a participating town clerk" for consistency and accuracy.

REVISION: The State Library declines to implement the recommendation to change the term "document" to "electronic document" in the phrase "for recording and maintaining documents in the land records management system" in subsection (a), renumbered as subsection (b) in this revised submission. The term "document" is used specifically and intentionally in this phrase. The land records management system is used to record and maintain documents and it would be impractical to limit the security requirements to only the subset of documents that are received electronically.

All other corrections have been made as directed. However, the phrase "a participating town clerk" has been used in place of "participating town clerks" in subsection (b), renumbered as subsection (c) in this revised submission, in keeping with the Drafting Manual's directive to use the singular form.

For consistency, the second reference to "town clerk" in section 7-35ee-2(1) has also been changed to "participating town clerk."

8. On page 4, in section **7-35ee-9(b)**, "Every town clerk" should be "Each town clerk" for proper grammar.

REVISION: The correction has been made as directed.

9. On page 4, in section **7-35ee-10(a)**, "sections 7-35ee-1 to 7-35ee-10" should be "this section and sections 7-35ee-1 to 7-35ee-9" for proper form.

REVISION: The correction has been made as directed.

For consistency, this same revision has been made in subsection (b) of this section.

10. On pages 4 and 5, in section **7-35ee-10**, throughout the section, "document" should be "electronic document" for accuracy and clarity; in subsection (a)(10) "for recording" should be "for electronic recording" for consistency and clarity; in subsection (c) "clerk shall establish" should be "clerk shall (1) establish", "municipality and shall post" should be "municipality (2) post", "and shall make" should be "and (3) make" for proper form.

REVISION: In subsection (a)(2) and (a)(4), the State Library declines to implement the recommendation to change the term "document" to "electronic document." These two terms have different meanings and each term is used intentionally and specifically. In these contexts, the term "document" is the correct term, as the references are to "document types" and "document codes," which relate to the basic categorization of land record documents into types such as deeds or liens.

In subsection (a)(10), the State Library declines to implement the recommendation to change the term "recording" to "electronic recording." In this context, the term "recording" is used specifically and intentionally, as explained in the response to Technical Correction #5, above.

All other corrections have been made as directed.

11. On page 5, in section **7-35ee-10(a)(10)**, the "systems" should specifically reference the electronic document delivery systems or the land records management systems as appropriate for clarity.

REVISION: The correction has been made as directed.